

***Before the School Ethics Commission
OAL Docket No.: EEC-10182-20
SEC Docket No.: C20-20
Final Decision***

**Joseph Argenziano,
Complainant**

v.

**Kathleen Fable,
Northern Valley Regional Board of Education, Bergen County
Respondent**

I. Procedural History

The above-captioned matter arises from a Complaint that was filed with the School Ethics Commission (Commission) on May 15, 2020,¹ by Joseph Argenziano (Complainant), a member of the Northern Valley Regional Board of Education (Board), alleging that Kathleen Fable (Respondent), also a member of the Board, violated the School Ethics Act (Act), *N.J.S.A.* 18A:12-21 *et seq.* More specifically, the Complaint alleges that Respondent violated *N.J.S.A.* 18A:12-24.1(c) and *N.J.S.A.* 18A:12-24.1(e) of the Code of Ethics for School Board Members (Code) when she conducted a personal investigation into the cost of Chromebooks by contacting vendors and other school districts without authorization from the Board.

At its meeting on September 29, 2020, and after reviewing Respondent's Motion to Dismiss in Lieu of Answer (Motion to Dismiss) and Complainant's response thereto, the Commission voted to deny the Motion to Dismiss in its entirety. Based on its determination, the Commission also voted to direct Respondent to file an Answer to Complaint (Answer), and to transmit the matter to the Office of Administrative Law (OAL) following receipt of the Answer.

On October 19, 2020, Respondent filed an Answer as directed. The Commission subsequently transmitted the matter to the OAL for a plenary hearing where Complainant would carry the burden to prove the alleged violations of the Code as set forth in the Complaint.

At the OAL, a hearing was held on November 22 and 23, 2022. Thereafter, the Administrative Law Judge (ALJ) issued an Initial Decision on May 15, 2023. Respondent filed exceptions to the Initial Decision, in accordance with *N.J.A.C.* 1:1-18.4, and Complainant filed a reply thereto.

¹ On May 15, 2020, Complainant filed a deficient Complaint; however, on May 19, 2020, Complainant cured all defects and filed an Amended Complaint that was deemed compliant with the requirements detailed in *N.J.A.C.* 6A:28-6.3.

At its meeting on June 27, 2023, the Commission considered the full record in this matter. Thereafter, at its meeting on July 25, 2023, the Commission voted to adopt the Initial Decision's findings of fact, the legal conclusions that Respondent violated *N.J.S.A.* 18A:12-24.1(c) and *N.J.S.A.* 18A:12-24.1(e), and the recommended penalty of censure.

II. Initial Decision

During the 2019-2020 school year, the Board was considering replacing the Apple devices in the one-to-one program where each student receives a device. *Initial Decision* at 21. On March 31, 2020, the Board heard a presentation on a feasibility study in which a recommendation was made to replace the 2,100 student devices with the MacBook Air 13. *Ibid.* While a vote was not taken at the Board meeting to approve the MacBooks, Respondent "set forth her skepticism" regarding the cost of the devices. *Id.* at 21-22. According to Respondent, she and another Board member were "frustrated with what they thought was the lack of information from the administration regarding their selection of new Apple devices to replace the old Apple Devices." *Id.* at 21.

On April 1, 2020, Respondent emailed the business administrators for the Tenafly, Emerson, Paramus and Ridgewood Boards of Education indicating that she was a member of the Board and requesting information on their experiences with Chromebooks as she was "looking to do an analysis of Apple devices versus Chromebooks." *Id.* at 22. Thereafter, Respondent's employee at her private business, Breana Sylvester (Sylvester), sent several emails to a district vendor, CDW-G. *Ibid.* Sylvester indicated that she was emailing "on behalf of a board member of the Northern Valley Regional High School district [(District)] in Demarest, NJ" and requested a quote for Chromebooks with detailed specifications, as "[t]he school is looking to move students over to Chromebooks, as part of a 1:1 program." *J-5; Initial Decision* at 22. The vendor alerted the Superintendent to the request, and the Superintendent advised the vendor that Sylvester was "illegally soliciting information" on the District's behalf. *Initial Decision* at 22. On April 14, 2020, CDW-G responded to Sylvester indicating that it could not provide quotes to an "unauthorized person." Respondent replied and indicated that she was seeking information regarding her "PERSONAL RESEARCH as a board member," but that as CDW-G was not responsive, she would contact another approved vendor. *J-8; Initial Decision* at 22. Consequently, Respondent sought price quotes for Chromebooks from Ocean Computers and Dell EMC. *Initial Decision* at 23.

Respondent did not apprise the Board of her plans, nor did she have approval from the Board, the Finance Committee, the Superintendent, the Board President, or the Board attorney to contact vendors or other school districts. *Ibid.* On April 27, 2020, the Board authorized the purchase of MacBooks for the one-to-one program, and on May 11, 2020, passed a resolution authorizing Complainant to file the within ethics complaint. *Ibid.*

The ALJ found that it is undisputed that Respondent contacted vendors, both directly and through her employee, as well as other school districts ostensibly on behalf of the Board. *Id.* at 25. The ALJ further found that Respondent and her employee identified Respondent as a Board member and represented that the Board was contemplating switching from MacBooks to

Chromebooks, despite the fact that the Board was considering no such switch. *Ibid.* According to the ALJ, Respondent’s “rationale” was her belief that she had not been given accurate and detailed information related to the MacBooks and wanted to do her own research. *Ibid.* However, the ALJ contends in doing so, Respondent violated [D]istrict policy and the Code because she put the Board in “potentially compromised positions” when she took private action to conduct a personal investigation into the cost of Chromebooks without authorization.” *Ibid.*

In concluding Respondent violated *N.J.S.A.* 18A:12-24.1(c) and *N.J.S.A.* 18A: 12-24.1(e) and recommending an appropriate penalty, the ALJ compared the within matter to *Lowell v. Smallwood, Asbury Park Board of Education, Monmouth County, 2017 N.J. Super. Unpub. LEXIS 1267* (App. Div. 2017). In *Lowell*, the respondents violated *N.J.S.A.* 18A:12-24.1(c) and *N.J.S.A.* 18A: 12-24.1(e) when they conducted a site visit to assess a candidate for interim Superintendent without board authority and without approval of the State monitor. The Commission recommended a penalty of censure for the violations, which was accepted by the Commissioner, and affirmed by the Appellate Division. The ALJ found this present matter to be similar to *Lowell* as Respondent “made repeated contact with vendors and school administrators without [B]oard approval.” *Initial Decision* at 26. As such, the ALJ recommended a penalty of censure. *Ibid.*

III. Exceptions

Respondent’s Exceptions

In her exceptions, Respondent initially argues that she had requested information regarding the costs of the technology refresh multiple times, but it was not provided, and that seeking data from outside entities when District administration fails to provide it is in accordance with the “best practices” for Board members according to the *Lighthouse Inquiry*, a publication by the Iowa Association of School Boards in 2001.

Respondent argues she did not violate *N.J.S.A.* 18A:12-24.1(c) because Complainant did not provide any evidence to support that Respondent “acted beyond the scope of her capacity as a board member.” On the contrary, Respondent maintains, the evidence demonstrates that she “conducted her own research, not on behalf of the Board, but with knowledge of all members of the Finance Committee,” which is common practice. Respondent further argues the Initial Decision disregarded Daniel Eller’s testimony which indicated that conducting outside research was part of the Finance Committee discussion and was discussed in the presence of Complainant and the Superintendent. Additionally, Respondent contends that the ALJ failed to consider Sylvester’s testimony that Respondent did not review the email she sent to the vendor, but rather another supervisor did.

Respondent argues she did not violate *N.J.S.A.* 18A:12-24.1(e) because there is no evidence that she made any personal promises to the individuals she contacted. Respondent maintains that contacting other school districts to learn about their experiences with Chromebooks is not something that would compromise a school board. Additionally, Respondent asserts that there is no evidence she “leveraged her standing as a [B]oard member to get information from outside sources,” such as other school districts or vendors, as she was

conducting “personal research.” Respondent maintains she did not direct her assistant to use her Board member status when drafting the emails in question, nor did she tell her assistant what companies to contact or the specifications for the Chromebooks. Furthermore, Respondent contends her inquiries did not compromise the Board.

As to the penalty, Respondent notes despite that she has not been a Board member since 2021, Complainant read the Initial Decision and the recommended penalty of censure to the public at the May 22, 2023, Board meeting, without waiting for the Commissioner of Education to make a final pronouncement of the penalty. Respondent argues a penalty of reprimand should be issued, rather than censure, due to the mitigating factors of Complainant’s use of the process for his own political gain and the administration’s failure to provide Respondent and the Finance Committee with “necessary information.”

Complainant’s Reply to Respondent’s Exceptions

In his reply, Complainant argues there is no basis to reject the ALJ’s findings that Sylvester and Respondent were not credible witnesses. Complainant contends the Commission should adopt the ALJ’s findings, namely that Respondent violated *N.J.S.A.* 18A:12-24.1(c), and *N.J.S.A.* 18A:12-24.1(e). More specifically, Complainant notes contrary to Respondent’s assertion that she was conducting “personal research,” it is undisputed that Respondent held herself out as representing the Board when she and her assistant solicited pricing information from vendors and information from other school districts. Complainant asserts Respondent contacted a District vendor and a potential vendor without the authorization of the full Board, while representing that she was seeking information as a Board member, and directed her assistant, who has no connection to the Board, to seek information on the Board’s behalf, in violation of *N.J.S.A.* 18A:12-24.1(c).

Regarding a violation of *N.J.S.A.* 18A:12-24.1(e), Complainant argues Respondent engaged in private action that compromised (or at a minimum had the potential to compromise) the Board when she “directly solicited information concerning school technology from a District vendor and a potential vendor, as well as several neighboring school districts’ Business Administrators without first obtaining authority from the Board.” Complainant reiterates Respondent and her assistant, on Respondent’s behalf, “‘gave the impression’ that she was acting on behalf of the Board, although she did not have permission to do so.”

Complainant urges the Commission to find a censure as the appropriate penalty as Respondent was “a seasoned Board member and serving in her second term at the time of the events at issue.” Therefore, Respondent should have been “well-aware” that her actions were unethical.

IV. Analysis

Upon a careful, thorough, and independent review of the record, the Commission agrees with the ALJ that Respondent violated *N.J.S.A.* 18A:12-24.1(c) and *N.J.S.A.* 18A:12-24.1(e).

At the outset, the Commission notes that an agency head may not reject or modify any findings of fact as to issues of credibility of lay witnesses unless it is first determined from a review of the record that those findings are arbitrary, capricious or unreasonable or are not supported by sufficient, competent, and credible evidence in the record. *N.J.S.A.* 52:14B-10(c); *N.J.A.C.* 1:1-18.6(c). Despite Respondent's arguments, the Commission finds no basis to disturb the credibility findings of the ALJ regarding Respondent's or Sylvester's testimony. The ALJ had the opportunity to observe and assess the witnesses during their testimony, and the credibility findings are supported by sufficient, competent, and credible evidence in the record.

Pursuant to *N.J.S.A.* 18A:12-24.1(c), board members must confine board action to "policy making, planning, and appraisal" and "frame policies and plans only after the board has consulted those who will be affected by them." Respondent took official action to effectuate policies and plans without consulting those affected by the policies and plans when she contacted vendors and other school districts, both indirectly and through her private employee who did not have a connection to the Board; identified herself as a member of the Board; and indicated that the Board was contemplating switching from MacBooks to Chromebooks, when the Board had not considered a change. In using misrepresentations (either directly or indirectly) and her position on the Board to find a quote for Chromebooks in the hope of securing a contract for Chromebooks, Respondent took action to effectuate plans without consulting with the Board. While Respondent alleges that some members of the Finance Committee were aware that she may conduct research, Respondent did not have Board approval to take such actions. Moreover, Respondent's actions far exceeded preliminary internet searches or "research"; she conducted a detailed inquiry in which she contacted school vendors and gave the impression that she was doing so on behalf of the Board. As such, the Commission agrees with the ALJ that Respondent's actions constitute a violation of *N.J.S.A.* 18A:12-24.1(c).

In accordance with *N.J.S.A.* 18A:12-24.1(e), Board members must "recognize that authority rests with the board of education," and therefore, must "make no personal promises nor take any private action that may compromise the board." Respondent took personal action when she contacted vendors and school districts without authorization from the Board, seeking price quotes for Chromebooks. Such actions had the potential to compromise the Board as Respondent falsely implied to vendors, including a District vendor, that the Board was considering purchasing Chromebooks. The Commission disagrees with Respondent that it is the "best practice" to seek data from outside entities when information is not provided by the administration. Respondent was within her right to express disagreement at the Board meeting, but it was inappropriate of Respondent to conduct her own private investigation and place the Board at risk. Further, the administration did not fail to provide information; a feasibility study was provided but Respondent sought additional information. Accordingly, the Commission agrees with the ALJ that Respondent violated *N.J.S.A.* 18A:12-24.1(e).

The Commission further agrees with the ALJ that a **censure** is the appropriate penalty for such a violation. *Lowell, supra*, presents an analogous case in which violations of *N.J.S.A.* 18A:12-24.1(c) and *N.J.S.A.* 18A:12-24.1(e) resulted in a censure after the respondents conducted a site visit without authority to assess a candidate for interim Superintendent. The

Commission notes that while Respondent no longer serves on the Board, she was an experienced Board member in her second term at the time of the violations and made repeated contacts with other school districts and vendors without Board approval. Furthermore, Respondent not only committed such flagrant violations on her own, but also recruited her private employee without any connection to the Board to conduct an investigation on her behalf. Accordingly, the Commission adopts the ALJ's recommended penalty in this matter.

IV. Decision

For all of the aforementioned reasons, the Commission adopts the Initial Decision of the OAL as the final decision in this matter. The Commission finds that Respondent violated *N.J.S.A.* 18A:12-24.1(c) and *N.J.S.A.* 18A:12-24.1(e) and adopts the recommended penalty of **censure** for the violation.

Pursuant to *N.J.S.A.* 18A:12-29(c), this decision shall be forwarded to the Commissioner of Education for review of the Commission's recommended penalty. The parties may either: 1) file exceptions to the recommended sanction; 2) file an appeal of the Commission's finding of a violation; or 3) file both exceptions to the recommended sanction together with an appeal of the finding of a violation.

Parties taking exception to the recommended sanction of the Commission but *not disputing* the Commission's finding of a violation may file, **within thirteen (13) days** from the date the Commission's decision is forwarded to the Commissioner, written exceptions regarding the recommended penalty to the Commissioner. The forwarding date shall be the mailing date to the parties, as indicated below. Such exceptions must be forwarded to: Commissioner of Education, c/o Bureau of Controversies and Disputes, P.O. Box 500, Trenton, New Jersey 08625, marked "Attention: Comments on Ethics Commission Sanction," as well as to (ControversiesDisputesFilings@doe.nj.gov). A copy must also be sent to the Commission (school.ethics@doe.nj.gov) and all other parties.

Parties seeking to appeal the Commission's finding of violation *must* file an appeal pursuant to the standards set forth at *N.J.A.C.* 6A:4:1 *et seq.* **within thirty (30) days** of the filing date of the decision from which the appeal is taken. The filing date shall be three (3) days after the date of mailing to the parties, as shown below. In such cases, the Commissioner's review of the Commission's recommended sanction will be deferred and incorporated into the Commissioner's review of the finding of violation on appeal. Where a notice of appeal has been filed on or before the due date for exceptions to the Commission's recommended sanction (thirteen (13) days from the date the decision is mailed by the Commission), exceptions need not be filed by that date, but may be incorporated into the appellant's briefs on appeal.

Robert W. Bender, Chairperson

Mailing Date: July 25, 2023

***Resolution Adopting Decision
in Connection with C20-20***

Whereas, at its meeting on September 29, 2020, the School Ethics Commission (Commission) voted to transmit the above-captioned matter to the Office of Administrative Law (OAL) for a plenary hearing; and

Whereas, the Administrative Law Judge (ALJ), issued an Initial Decision dated May 15, 2023; and

Whereas, the ALJ found that Respondent violated *N.J.S.A.* 18A:12-24.1(c) and *N.J.S.A.* 18A:12-24.1(e), and recommended that Respondent be censured; and

Whereas, Respondent filed exceptions to the Initial Decision and Complainant filed a reply to Respondent's exceptions; and

Whereas, at its meeting on June 27, 2023, the Commission reviewed the record in this matter, discussed adopting the ALJ's conclusion that Respondent violated *N.J.S.A.* 18A:12-24.1(c) and *N.J.S.A.* 18A:12-24.1(e), and discussed adopting the recommended penalty of censure; and

Whereas, at its meeting on July 25, 2023, the Commission reviewed and voted to approve the within decision as accurately memorializing its actions/findings from its meeting on June 27, 2023; and

Now Therefore Be It Resolved, the Commission hereby adopts the within decision.

Robert W. Bender, Chairperson

I hereby certify that this Resolution was duly adopted by the School Ethics Commission at its regularly scheduled meeting on July 25, 2023.

Brigid C. Martens, Acting Director
School Ethics Commission